

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

* Case No. 19-CR-557 (SJ)

*

* Brooklyn, New York

* March 18, 2022

V.

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BINBU FENG,

*

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Defendant.

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TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:

ANDREW WANG, ESQ.

Asst. United States Attorney
United States Attorney's Office
271 Cadman Plaza
Brooklyn, NY 11201

For the Defendant:

MIA EISNER-GRYNBERG, ESQ.

Federal Defenders of New York
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Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

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1 (Proceedings commenced at 2:10 p.m.)

2 THE CLERK: Criminal cause for a guilty plea,
3 United States versus Binbu Feng, docket no. 2019-CR-557.
4 Will counsel appearing in person please state their
5 appearances for the record?

6 MR. WANG: Good afternoon, Your Honor. For the
7 United States, Andrew Wang.

8 THE COURT: Good afternoon.

9 MS. EISNER-GRYNBERG: Federal Defenders by Mia
10 Eisner-Grynberg for Mr. Feng. Mr. Feng is to my right and to
11 his right is the official Cantonese interpreter. Good
12 afternoon, Judge.

13 THE COURT: Good afternoon.

14 MR. WANG: Also present is interpreter Nancy Wu,
15 previously sworn.

16 THE COURT: All right. Welcome to everyone. Would
17 everyone be seated, except Mr. Feng.

18 THE DEFENDANT: Thank you.

19 THE COURT: If he could remain standing.

20 THE DEFENDANT: Thank you.

21 THE COURT: The interpreter may as well. Would you
22 swear the defendant?

23 (The defendant is sworn.)

24 THE CLERK: Please state your full name and spell
25 your last name for the record.

1 THE DEFENDANT: Binbu Feng.

2 THE CLERK: And if you could spell your last name
3 for the record.

4 THE DEFENDANT: F-E-N-G.

5 THE CLERK: Thank you.

6 THE COURT: Please be seated.

7 THE DEFENDANT: Okay. Thank you.

8 THE COURT: Mr. Feng, you should understand that
9 having been sworn, your answers to my questions will be
10 subject to the penalties of perjury if you do not answer
11 truthfully.

12 Do you understand that?

13 THE DEFENDANT: I do.

14 THE COURT: I have before me a document entitled
15 Consent to Have a Plea Before United States Magistrate Judge.

16 Is that your signature on the defendant's signature
17 line?

18 THE DEFENDANT: Yes.

19 THE COURT: Has this been translated for you and
20 have you discussed it with your attorney?

21 THE DEFENDANT: Yes.

22 THE COURT: I want -- do you understand what you've
23 agreed to by signing this document?

24 THE DEFENDANT: Yes.

25 THE COURT: I want to make sure that you do

1 understand what you've consented to. This is Judge Johnson's
2 case. He's a United States District Court Judge and he's the
3 Judge who will sentence you and make the ultimate decision as
4 to whether to accept your guilty plea.

5 If you wish, you have the absolute right to have
6 Judge Johnson listen to your plea and if you choose to do
7 that, there will be no prejudice or harm to you.

8 Do you understand that?

9 THE DEFENDANT: I understand.

10 THE COURT: On the other hand, if you wish, I will
11 listen to your plea. I'm a United States Magistrate Judge.
12 This proceeding is being recorded. A transcript will be made
13 of the proceeding and Judge Johnson will review it to decide
14 whether to accept your plea. He'll also review it in
15 connection with your sentence.

16 Do you understand that?

17 THE DEFENDANT: Understand.

18 THE COURT: Do you wish to give up your right to
19 have Judge Johnson listen to your plea and are you prepared
20 to proceed before me instead?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you make this decision voluntarily
23 and of your own free will?

24 THE DEFENDANT: Yes.

25 THE COURT: Have any threats or promises been made

1 to you to get you to agree to have me hear your plea?

2 THE DEFENDANT: No.

3 THE COURT: I find that Mr. Feng's consent is
4 knowing, intelligent and voluntary, therefore, I'm prepared
5 to proceed.

6 Mr. Feng, before accepting your guilty plea, there
7 are a number of questions that I have to ask you to make sure
8 that it's a valid plea. If you don't understand any of my
9 questions, please say so and I'll reword the question. All
10 right?

11 THE DEFENDANT: Okay.

12 THE COURT: Okay. Mr. Feng, how old are you?

13 THE DEFENDANT: Forty-one.

14 THE COURT: How far did you go in school?

15 THE DEFENDANT: Two years in junior high school.

16 THE COURT: Are you able to speak and understand
17 any English?

18 THE DEFENDANT: No.

19 THE COURT: Have you had any difficulty
20 communicating with your attorney?

21 THE DEFENDANT: Well, because there is an
22 interpreter present, so I have no difficulty in
23 communication.

24 THE COURT: Ms. Eisner-Grynberg, have you had any
25 difficulty communicating with Mr. Feng?

1 MS. EISNER-GRYNBERG: No. We have always
2 communicated through an interpreter.

3 THE COURT: Mr. Feng, are you now or have you
4 recently been under the care of a doctor or psychiatrist?

5 THE DEFENDANT: No.

6 THE COURT: In the past 24 hours, have you taken
7 any drugs, medicine, narcotics, or pills or drunk any
8 alcoholic beverages?

9 THE DEFENDANT: No.

10 THE COURT: Have you ever been hospitalized or
11 treated for substance abuse or for any mental or emotional
12 problem?

13 THE DEFENDANT: No.

14 THE COURT: Is your mind clear now?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand what's going on here
17 now?

18 THE DEFENDANT: I'm in court.

19 THE COURT: And do you understand everything that's
20 going on?

21 THE DEFENDANT: Yes, I'm aware of it.

22 THE COURT: Ms. Eisner-Grynberg, have you discussed
23 the matter of pleading guilty with your client?

24 MS. EISNER-GRYNBERG: Yes, I have.

25 THE COURT: In your view, does he understand the

1 rights he'll be waiving by pleading guilty?

2 MS. EISNER-GRYNBERG: Yes.

3 THE COURT: Is he capable of understanding the
4 nature of these proceedings?

5 MS. EISNER-GRYNBERG: Yes, he is.

6 THE COURT: Do you have any doubt as to his
7 competence to plead at this time?

8 MS. EISNER-GRYNBERG: No.

9 THE COURT: Have you advised him of the maximum
10 sentence and fine that can be imposed and have you discussed
11 with him the effect of the sentencing guidelines?

12 MS. EISNER-GRYNBERG: Yes, I have.

13 THE COURT: Mr. Feng, have you discussed your case
14 with Ms. Eisner-Grynberg and are you satisfied to have her
15 represent you?

16 THE DEFENDANT: Very satisfied.

17 THE COURT: Have you seen a copy of the indictment
18 that's been filed against you and has it been translated for
19 you either in writing or through an interpreter orally?

20 THE DEFENDANT: Yes.

21 THE COURT: Have you consulted with Ms. Eisner-
22 Grynberg about the indictment?

23 THE DEFENDANT: Yes, I have.

24 THE COURT: The indictment contains two counts or
25 charges along with a criminal forfeiture allegation. I

1 understand that you're prepared to plead guilty to what's
2 known as a lesser included offense within Count 2.

3 I'm going to explain what Count 2 is, then I'll
4 focus on the lesser included offense and I'll describe what
5 the government would have to prove to establish your guilt on
6 that count.

7 Count 2 charges you with Possession with Intent to
8 Distribute Marijuana. More specifically, it alleges that on
9 October 28th of 2019, you and others knowingly and
10 intentionally possessed with intent to distribute 100
11 kilograms or more of marijuana.

12 I understand that you're prepared to plead guilty
13 to that offense without an admission or without the element
14 of the 100 kilograms of marijuana. The quantity.

15 In order to prove you guilty of the lesser included
16 offense the government would have to prove the following
17 beyond a reasonable doubt.

18 First, that on approximately October 28th of 2019,
19 you possessed -- that is, you had custody or control of a
20 substance.

21 The government would have to prove that you
22 possessed or had control of that substance with the intention
23 to distribute, sell or otherwise transfer it.

24 The government would have to prove that the
25 substance was marijuana and that you understood that it was

1 marijuana or some other illegal drug that you possessed with
2 the intent to distribute.

3 And the government would have to prove that you
4 acted knowingly and intentionally and not because of some
5 mistake or innocent reason.

6 Do you understand that charge?

7 THE DEFENDANT: I do understand.

8 THE COURT: I now want to talk with you about the
9 rights that you'll be giving up by pleading guilty, but the
10 first and most important thing you have to understand is that
11 you have an absolute right to plead not guilty.

12 Do you understand that?

13 THE DEFENDANT: I understand.

14 THE COURT: If you plead not guilty, then under the
15 constitution and laws of the United States, you're entitled
16 to a speedy and public trial by jury with the assistance of
17 counsel on the charges contained in the indictment against
18 you.

19 Do you understand that?

20 THE DEFENDANT: I do understand.

21 THE COURT: You have the right to be represented by
22 an attorney at every stage of the proceeding, including trial
23 and if you could not afford counsel, you have the right to
24 have the Court appoint an attorney to represent you at no
25 charge to you.

1 Do you understand that?

2 THE DEFENDANT: I do understand that.

3 THE COURT: At the trial, you would be presumed to
4 be innocent and the government would have to overcome that
5 presumption and prove you guilty by competent evidence and
6 beyond a reasonable doubt. You would not have to prove that
7 you are innocent. And if the government failed to prove you
8 guilty beyond a reasonable doubt, the jury would have the
9 duty to find you not guilty.

10 Do you understand that?

11 THE DEFENDANT: I understand.

12 THE COURT: In the course of the trial, the
13 witnesses for the government would have to come to court and
14 testify in your presence and your attorney would have the
15 right to cross-examine the witnesses for the government, to
16 object to evidence offered by the government to compel the
17 attendance of witnesses and to offer evidence on your behalf.

18 Do you understand that?

19 THE DEFENDANT: I understand.

20 THE COURT: At a trial, while you would have the
21 right to testify if you chose to do so, you could not be
22 required to testify.

23 Under the Constitution of the United States, you
24 cannot be compelled to incriminate yourself. If you decided
25 not to testify, the Court would at your lawyer's request

1 instruct the jurors that they could not hold that against
2 you.

3 Do you understand that?

4 THE DEFENDANT: Understand.

5 THE COURT: If you plead guilty and the Court
6 accepts your plea, you'll be giving up your constitutional
7 right to a trial and the other rights that I've just
8 discussed.

9 There will be no further trial of any kind and no
10 right of appeal from the judgment of guilty. The Court will
11 simply enter a judgment of guilty on the basis of your guilty
12 plea.

13 Do you understand that?

14 THE DEFENDANT: Understand.

15 THE COURT: If you plead guilty, I'll have to ask
16 you questions about what you did in order to satisfy myself
17 and Judge Johnson that you are, in fact, guilty of the charge
18 to which you seek to plead guilty. And you'll have to answer
19 my questions and admit your guilt. In that way, you'll be
20 giving up your right not to incriminate yourself.

21 Do you understand that?

22 THE DEFENDANT: Understand.

23 THE COURT: Are you willing to give up your right
24 to a trial and the other rights that I've just discussed?

25 THE DEFENDANT: Yes.

1 THE COURT: I have before me a plea agreement
2 that's been marked Court Exhibit 1. Turning to the last page
3 of that document, is that your signature on the defendant's
4 signature line on page eight?

5 THE DEFENDANT: Yes, it is.

6 THE COURT: And this document was translated for
7 you by Ms. Woo, Nancy Woo?

8 THE DEFENDANT: Yes.

9 THE COURT: And have you reviewed it with your
10 attorney?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand all the terms and
13 conditions of this agreement?

14 THE DEFENDANT: Yes.

15 THE COURT: Does this document fully and accurately
16 reflect your understanding of the agreement you've reached
17 with the government concerning your guilty plea?

18 THE DEFENDANT: Yes.

19 THE COURT: Other than the promises contained in
20 this document, has anyone made any promise that has caused
21 you to plead guilty?

22 THE DEFENDANT: No.

23 THE COURT: Has anyone made any promise to you as
24 to what your sentence will be?

25 THE DEFENDANT: No.

1 THE COURT: I now want to review with you the
2 sentencing scheme that's applicable here. The statute that
3 you're accused of violating in the lesser included offense in
4 Count 2 carries a prison term of 20 years and no mandatory
5 minimum term of imprisonment.

6 Do you understand that?

7 THE DEFENDANT: I understand.

8 THE COURT: In addition to a prison term the
9 sentencing court can also -- will also impose a supervised
10 release term of at least three years and as long as life.

11 The supervised release term will follow any term of
12 imprisonment and if you violate a condition of supervised
13 release, you could then be sent back to prison for up to an
14 additional two years.

15 If that happened, you would not receive credit for
16 time already spent in prison, nor would you receive credit
17 for time previously served on post-release supervision.

18 Do you understand that?

19 THE DEFENDANT: Understand.

20 THE COURT: The sentencing court can also impose a
21 fine of up to \$1,000,000.

22 Do you understand that?

23 THE DEFENDANT: Understand.

24 THE COURT: The sentencing court will impose a
25 mandatory \$100 special assessment.

1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Another consequence of your guilty plea
4 is criminal forfeiture as set forth in more detail in
5 paragraphs 6 through 11 of your plea agreement with the
6 government.

7 Do you understand that?

8 THE DEFENDANT: I do.

9 THE COURT: And as part of the agreement with the
10 government, you've consented to the forfeiture of a 2016
11 Toyota Sienna and a 2016 Toyota Tundra, both of which were
12 seized on approximately October 28th of 2019.

13 Do you understand that?

14 THE DEFENDANT: Yes, I understand.

15 THE COURT: And you should understand that
16 forfeiture is separate and apart from any fine that the Court
17 might choose to impose.

18 Do you understand that?

19 THE DEFENDANT: Understand.

20 THE COURT: And although the plea agreement doesn't
21 specifically provide for this, I -- well, it doesn't provide
22 -- it doesn't note it in paragraph one, it does address it in
23 paragraph 13 and that is with respect to the defendant's
24 immigration status that the -- another consequence of the
25 guilty plea is removal or deportation from the United States.

1 Do you understand that, Mr. Feng?

2 THE DEFENDANT: Understand.

3 THE COURT: And I take it Mr. Feng is not a citizen
4 of the United States. Is that correct, Ms. Eisner-Grynberg?

5 MS. EISNER-GRYNBERG: That's correct.

6 THE COURT: Mr. Feng, I now want to talk with you
7 about the sentencing guidelines. Under the Sentencing Reform
8 Act of 1984, the United States Sentencing Commission has
9 issued guidelines for judges to consider in determining the
10 sentence in a criminal case.

11 In determining the sentence, the Court is obligated
12 to calculate the applicable sentencing guideline range and to
13 consider that range, possible departures under the
14 guidelines, and other sentencing factors including those
15 specified by statute.

16 Have you and Ms. Eisner-Grynberg talked about how
17 the guidelines might apply to your case?

18 THE DEFENDANT: Yes. We talk about it.

19 THE COURT: You should understand that -- that
20 Judge Johnson will not be able to do the guideline
21 calculation for your case until after the Probation
22 Department has prepared a pre-sentence report and you and
23 your attorney have had an opportunity to read it and to
24 challenge the facts recorded by the probation officer.

25 Do you understand that?

1 THE DEFENDANT: Understand.

2 THE COURT: You should also understand after it's
3 been determined what guideline applies to a case, the judge
4 has the authority to impose a sentence that is more severe or
5 less severe than the sentence called for by the guidelines,
6 depending on what is a reasonable sentence.

7 Do you understand that?

8 THE DEFENDANT: Understand.

9 THE COURT: I'm now going to ask the attorneys to
10 give their best estimate of what the guideline range is
11 likely to be, but I want you to keep in mind that these
12 estimates are simply their own best guesses. They're not
13 binding upon Judge Johnson, even if both your lawyer and the
14 prosecutor happen to be in agreement.

15 Do you understand that?

16 THE DEFENDANT: Understand.

17 THE COURT: I just had a note passed up to me
18 asking whether I had skipped the mandatory special
19 assessment. I thought I had noted it, but in an abundance of
20 caution, another consequence of your plea is a mandatory \$100
21 special assessment.

22 Do you understand that, Mr. Feng?

23 THE DEFENDANT: I do understand.

24 THE COURT: Again, I'm now going to ask the
25 attorneys to give their best estimate of what the guideline

1 range of imprisonment is likely to be, but again, this is not
2 binding on Judge Johnson.

3 I'll start with Mr. Wang. I take it the
4 government's calculation is set forth in paragraph two of the
5 agreement.

6 MR. WANG: It is, Your Honor.

7 THE COURT: And you've calculated an offense level
8 of 14 with a two level reduction for acceptance of
9 responsibility. That would result in an adjusted offense
10 level of 12 and a range of imprisonment of 10 to 16 months,
11 assuming that the defendant falls within criminal history
12 category one.

13 Is that correct?

14 MR. WANG: That's correct, Your Honor.

15 THE COURT: And, Ms. Eisner-Grynberg, have you done
16 your own calculation under the guidelines?

17 MS. EISNER-GRYNBERG: We have the same calculation.

18 THE COURT: All right.

19 Mr. Feng, again, I would just emphasize that even
20 though both attorneys are in agreement, Judge Johnson will
21 have to do his own calculation under the -- under the
22 guidelines.

23 Do you understand that?

24 THE DEFENDANT: I do.

25 THE COURT: I want to point out a particular

1 provision of this agreement. Paragraph 4 provides in
2 substance and in part that you will not file an appeal or
3 otherwise challenge your conviction or sentence in the event
4 the Court imposes a term of imprisonment of 16 months or
5 below. Sixteen months is the upper end of the guideline
6 range estimate by the attorneys.

7 Now, under this agreement, you and your lawyer are
8 free to argue before your sentence that you should not be
9 sent to prison for as long as 16 months.

10 For example, under this agreement, you and Ms.
11 Eisner-Grynberg could argue that you should be sentenced
12 below the guideline range or that if the judge is inclined to
13 sentence you within the range, that he sentence you at the
14 low end of the range rather than the upper end of the range.

15 All of these arguments and other good faith
16 arguments are available to you and your lawyer before your
17 sentence.

18 However, because of the language in paragraph four
19 that I've just summarized for you, once Judge Johnson
20 sentences you, as long as he does not send you to prison for
21 more than 16 months, that is the end of the matter.

22 You've agreed that as long as your sentence is 16
23 months or below, you will not file an appeal or otherwise
24 challenge your conviction or sentence.

25 Do you understand that?

1 THE DEFENDANT: I do.

2 THE COURT: You should also understand that parole
3 has been abolished and if you're sentenced to prison, you
4 will not be released on parole.

5 Do you understand that?

6 THE DEFENDANT: I understand.

7 THE COURT: Do you have any questions you'd like to
8 ask me about the charge, your rights, or anything else
9 relating to this matter?

10 THE DEFENDANT: No, I do not have any questions.

11 THE COURT: Are you ready to plead?

12 THE DEFENDANT: Yes.

13 THE COURT: Ms. Eisner-Grynberg, do you know any
14 reason why your client should not plead guilty?

15 MS. EISNER-GRYNBERG: No.

16 THE COURT: Mr. Feng, what is your plea to the
17 lesser included offense of Count 2; guilty or not guilty?

18 THE DEFENDANT: I plead guilty.

19 THE COURT: Are you making this plea of guilty
20 voluntarily and of your own freewill?

21 THE DEFENDANT: Yes.

22 THE COURT: Has anyone threatened or forced you to
23 plead guilty?

24 THE DEFENDANT: No.

25 THE COURT: Other than the plea agreement marked

1 Court Exhibit 1, has anyone made any promise that has caused
2 you to plead guilty?

3 THE DEFENDANT: No.

4 THE COURT: Has anyone made any promise to you as
5 to what your sentence will be?

6 THE DEFENDANT: No.

7 THE COURT: Again, the lesser included offense in
8 Count 2 alleges that on approximately October 28 of 2019, you
9 and others knowingly and intentionally possessed marijuana
10 with the intent to distribute it.

11 Did you, in fact, do that?

12 THE DEFENDANT: Yes.

13 THE COURT: Would you tell me in your own words
14 what you did that makes you guilty of that offense?

15 THE DEFENDANT: On October 28th, 2019 in Queens,
16 New York, I picked up packages that I knew contained
17 marijuana. I was driving them to another person when I was
18 arrested.

19 THE COURT: And you say you knew that the packages
20 contained marijuana. At the time that you picked them up and
21 were transporting them, you knew that that was marijuana, a
22 controlled substance?

23 THE DEFENDANT: Yes.

24 THE COURT: And you knew from the quantity that
25 this was not personal -- for personal use. This was a large

1 quantity to be -- to be sold or otherwise transferred?

2 THE DEFENDANT: Yes. I was in charge of making
3 deliveries, so my job was delivering it.

4 THE COURT: Mr. Wang, is there -- do you want to
5 follow up on this line of inquiry?

6 MR. WANG: Your Honor, the defendant has stated
7 that he was intending on delivering it to another person.

8 I suppose we could be thorough and confirm he
9 agrees that at the time he possessed the marijuana, he
10 intended to distribute or dispense it to another person.

11 THE COURT: You were -- you were in possession of
12 this with the intent to transfer it to someone else, correct?

13 THE DEFENDANT: Yes. To deliver it to others.

14 THE COURT: And it was a large quantity? Large
15 bags of marijuana?

16 THE DEFENDANT: In fact, I do not know the actual
17 number.

18 THE COURT: I'm not asking you the actual number.
19 It's just -- it wasn't in a little bag, sandwich bag. They
20 were big bales, correct?

21 THE DEFENDANT: Yes.

22 THE COURT: And you knew it was wrong to do that?

23 THE DEFENDANT: I was aware of that, yes.

24 THE COURT: Is there any further inquiry that the
25 government would like me to make of the defendant?

1 MR. WANG: No, Your Honor.

2 THE COURT: Based on the information provided to
3 me, I find that Mr. Feng is acting voluntarily. That he
4 fully understands his rights and the consequences of his
5 plea, and that there is a factual basis for the plea.

6 I, therefore, recommend acceptance of the plea of
7 guilty to the lesser included offense in Count 2.

8 I believe we have a date for sentence?

9 MR. WANG: Correct, Judge. It's June 28th, 2022 at
10 9:30 a.m.

11 THE COURT: And do we know, is that -- will that be
12 in person?

13 MR. WANG: I expect so.

14 THE COURT: Mr. Feng, in the interim, the Probation
15 Department will be preparing a pre-sentence report. I urge
16 you to cooperate with the probation officer.

17 Is there anything further that anyone would like to
18 address?

19 MR. WANG: Not from the government, Your Honor.

20 MS. EISNER-GRYNBERG: Neither from Mr. Feng. Thank
21 you.

22 THE COURT: All right. In that case, I'll conclude
23 this proceeding. Everyone please take care and stay safe.
24 Good-bye.

25 MR. WANG: Thank you, Your Honor.

1 THE DEFENDANT: Thank you.

2 (Proceedings concluded at 2:40 p.m.)

3
4 I, CHRISTINE FIORE, court-approved transcriber and
5 certified electronic reporter and transcriber, certify that
6 the foregoing is a correct transcript from the official
7 electronic sound recording of the proceedings in the above-
8 entitled matter.

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11 April 29, 2022

12 _____
13 Christine Fiore, CERT
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